

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PAUL H. CIBULSKI)	
Claimant)	
VS.)	
)	Docket No. 253,381
COHEN ESREY REAL ESTATE, INC.)	
Respondent)	
AND)	
)	
CGU HAWKEYE SECURITY INSURANCE)	
Insurance Carrier)	

ORDER

Respondent appeals the May 19, 2000, Order For Medical Treatment of Administrative Law Judge Bryce D. Benedict. Respondent was ordered to pay claimant's medical bills, prescription expenses and mileage, and to provide authorized medical care for claimant's injuries with Michael J. Schmidt, M.D., until claimant reaches maximum medical improvement.

ISSUES

- (1) Did claimant suffer accidental injury on the date alleged?
- (2) Did claimant suffer an intervening accidental injury as a series beginning in July 1999 and continuing through January 12, 2000?
- (3) If claimant suffered a second series of accidental injuries ending in January 2000, did claimant provide timely notice of this second series of accidents pursuant to K.S.A. 44-520?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The dispute in this instance revolves around whether claimant's condition is a natural progression of his original April 3, 1998, accident or whether claimant has, in some fashion, suffered a new series of microtraumas beginning in July 1999 through his last day at work with respondent on February 28, 2000.

Claimant suffered accidental injury to his low back while lifting air conditioner compressors on April 3, 1998. Claimant advised his supervisor of the injury and was provided medical care with orthopedic surgeon Michael J. Schmidt, M.D. Dr. Schmidt treated claimant through July 9, 1999, at which time Dr. Schmidt felt claimant had reached maximum medical improvement and rated him at 5 percent impairment to the body as a whole.

Claimant's symptoms had continually involved radiculopathy into the right lower extremity. As of Dr. Schmidt's examination on July 9, 1999, claimant was generally improved, although Dr. Schmidt noted continued low back pain with occasional radiculopathy into the right posterior thigh and into the calf. He noted that claimant managed his symptoms with Ibuprofen 800mg which he was required to take two to three times a day. Dr. Schmidt opined that repetitive bending and lifting brought on claimant's additional symptoms.

Claimant returned to Dr. Schmidt on January 12, 2000. Respondent argues an absence of symptoms between July 9, 1999, and January 12, 2000. However, Dr. Schmidt's medical records contradict respondent's allegations. Dr. Schmidt's examination in July 1999 clearly showed ongoing, although improved, symptomatology. Dr. Schmidt's medical records of January 12, 2000, indicated claimant's symptoms had increased gradually over the past month, although claimant acknowledged it was not as bad as it had been in the past. He noted claimant's concern that his back and legs continued to worsen.

Dr. Schmidt's impression at the time of the January examination was that claimant was experiencing a reoccurrence of the right side L5 radiculopathy due to the previously documented herniated nucleus pulposus at L5-S1.

Respondent contends that claimant suffered a new series of accidents beginning in July 1999 and, pursuant to K.S.A. 44-520, failed to provide respondent with timely notice of this new series of accidents. Respondent's argument is rejected. The medical evidence shows that claimant's symptoms were never entirely eliminated. Claimant was suffering from occasional radiculopathy and low back pain as of Dr. Schmidt's last examination in July. The symptoms described in January 2000 are nearly identical to those experienced during the entire treatment history with Dr. Schmidt. The back and leg pain, although in varying degrees of severity, remained during the time claimant continued working for respondent.

The Appeals Board finds that claimant's symptoms and current need for medical treatment stem from the April 3, 1998, accidental injury suffered while claimant was lifting air conditioner compressors for respondent, and that the ongoing symptomatology is a reasonable and natural consequence of that injury. Therefore, the conversation claimant had with his supervisor after the April 1998 incident constituted notice to respondent of

accidental injury pursuant to K.S.A. 44-520. Additional notice of claimant's ongoing symptoms was not required.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated May 19, 2000, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 2000.

BOARD MEMBER

c: John J. Bryan, Topeka, KS
Michael H. Stang, Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director